(1980) 04 MAD CK 0017

In the Madras High Court

Case No : Tax Case No. 167 of 1978 (Revision No. 33 of 1978)

State of Tamil Nadu APPELLANT

Vs

Kasiraja Nadar RESPONDENT

Date of Decision : 08-04-1980

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 17, 17(1), 3(2)

Citation : (1981) 47 STC 337

Hon'ble Judges : M.M. Ismail, C.J;M.A. Sathar Sayeed, J

Bench : Division Bench

Advocate : P. Venkataraman for the Additional Government Pleader, for the Appellant; C. Natarajan, for the Respondent

Judgement

Ismail, C.J.—In this tax revision case the point involved is whether tapioca thippi dust and the mixture of molasses with tapioca thippi dust

are articles of cattle feed falling within the scope of the notification issued by the Government of Tamil Nadu u/s 17(1) of the Tamil Nadu General

Sales Tax Act, 1959, on 4th March, 1974. The notification, so far as it is relevant, reads as follows :

In exercise of the powers conferred by sub-section (1) of section 17 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of

1959), the Governor of Tamil Nadu hereby makes an exemption in respect of the tax payable by any dealer under the said Act on the sale of -

....

(2) Cattle feed, namely, hay or straw or rice bran or wheat bran or husk and dust of pulses and grams, but excluding -

(i) brokens of pulses and grams;

(ii) oil-cakes; and

(iii) cotton seeds.

2. The Tribunal took the view that tapioca thippi dust and the mixture of molasses with tapioca thippi dust are items of cattle feed and are therefore

covered by the notification extracted above and consequently exempt from tax. It is this conclusion of the Tribunal that is challenged by the State in

the present tax revision case. The contention of the State is that it is not every item of cattle feed that is covered by the notification and that the

notification covers only the enumerated items of cattle feed mentioned therein. We are of the opinion that this contention of the State is correct. The

word ""namely"" has been construed by a Bench of this Court with reference to item 13 of the Fifth Schedule to the Income Tax Act, 1961, in

Commissioner of Income Tax Vs. Arasan Fertilisers (P.) Ltd., In that case the point that had to be considered was whether bone-meal

manufactured by the assessee-company was one of the articles or things specified in the list in the Fifth Schedule to the Income Tax Act, 1961.

Item 13 of the Fifth Schedule reads as follows :

13 Fertilisers, namely, ammonium sulphate, ammonium sulphate nitrate (double salt), ammonium nitrate, calcium ammonium nitrate (nitrolime

stone), ammonium chloride, superphosphate, urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorus, such as

ammonium phosphates, ammonium sulphate phosphate and ammonium nitrophosphate.

3. After extracting the above entry, the learned Judges observed :

The question thus revolves on the interpretation placed on this entry. This entry after the word ''fertilisers'' uses the word ''namely'' and enumerates

a number of items. There could be no doubt that within the general description of the fertilisers bone-meal which is manufactured by the assessee-

company is comprehended. In fact, the bone-meal, raw and bone-meal steamed, is enumerated as items which were the subject-matter of the

control under the Fertilisers Control Order, 1957. The revenue also did not dispute that bone-meal would come within the meaning of fertiliser but

what was contended by the revenue was that it is not the manufacture of fertiliser in general that was given the benefit of rebate but only those

enumerated items of fertilisers that were given the benefit. For this interpretation the revenue places reliance on the use of the word ''namely'' after the word ''fertilisers''. It is the contention of the revenue that the word ''namely'' restricts the interpretation of the fertilisers to those that are

enumerated, though many other items would also he included in that word; and if the legislature intended to give the full meaning it would have

either used that word alone or given an inclusive definition. We think that the learned counsel for the revenue is well-founded in this contention.

4. After making the above observations, the learned Judges referred to the meaning of the word ""namely"" given in the standard dictionaries. They

observed :

In Stroud''s Judicial Dictionary of Words and Phrases, fourth edition, volume 3, at page 229, we find the following passage against the word

''namely'' :

''A difference, in grammatical sense, in strictness exists between the words ""namely"" and ""including"". ""Namely"" imports interpretation, i.e., indicates

what is included in the previous term; but ""including"" imports addition, i.e., indicates something not included.''

In Craies on Statute Law, seventh edition, at page 213, we find the following passage :

''There are two forms of interpretation clause. In one, where the word defined is declared to ""mean"" so and so, the definition is explanatory and

Prima facie restrictive. In the other, where the word defined is declared to ""include"" so and so, the definition is extensive.''

To similar effect is a passage in Corpus Juris Secundum, volume LXIV, at page 1084, where it is stated that the term ''namely'' is a term which

imports interpretation, that is, indicates what is included in the previous term. Thus, when the legislature used the expression ''namely'' after the

word ''fertilisers'', the meaning given to the word should be restricted to those that are enumerated. The legislature has used both the words

''namely'' and ''including'' in the same Fifth Schedule in items 13 and 18. Thus, the legislature clearly should have intended in using these different

words in different entries to restrict or enlarge a general meaning and, therefore, we are not entitled to enlarge the meaning of the word ''fertiliser''

on any consideration of common usage of the word ''fertiliser''.

5. So also, with regard to the Tamil Nadu General Sales Tax Act, 1959, different expressions have been used to indicate whether the expression is

used in a restrictive sense or in an illustrative sense. There is the First Schedule containing several entries, giving the names of the goods in respect

of which single point tax is leviable under sub-section (2) of section 3 of the Act. Item 30 of the First Schedule reads as follows :

Precious stones, namely, diamonds, emeralds, rubies, real pearls and sapphires whether they are sold loose or as forming part of any article in

which they are set.

6. Item 74 of the same schedule reads as follows :

Raw rubber, namely, latex.

7. Item 126 of the said schedule reads as follows :

Rubber products, namely :-

(i) Latex foam sponge.

8. Item 75 of the same schedule reads as follows :

Wheat products (for example wheat flour, sooji and wheat bran).

9. Item 36 of the same schedule reads as follows :

Tea, that is to say, any one of the forms of tea in which it is sold but not including tea drink or green tea leaves.

10. Thus it will be seen that the statute itself uses different expressions : ""namely""; ""for example""; ""that is to say"". When the statute itself uses

deliberately different expressions in different contexts, it is not a rule of interpretation to hold that all these expressions mean one and the same

thing. If the intention of the legislature was to give the same meaning to the different expressions, the legislature would not have used different

expressions, but would have used the same expression.

11. We shall now consider the language used by the Government in the various notifications issued by it u/s 17(1) of the Act, exempting certain

turnovers from tax or reducing the rate of tax applicable to certain turnovers. The Government issued a notification to be effective from 1st April,

1959, making exemption in respect of the tax payable on the sale or purchase of certain goods. One such entry in the notification was :

Sales of products of palmgur industry and of articles such as baskets, mats, brushes, fans, etc., manufactured out of palm leaves, effected by any

dealer, in the State producing such commodities.

12. We are drawing attention to the use of the words ""such as"" occurring in the notification.

13. Another notification issued by the Government in G.O. No. 4628, Revenue, dated 17th December, 1962, reads as follows :

In exercise of the powers conferred by section 17 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), the Governor of Madras

hereby -

(1) reduces to 2 per cent for the period commencing on the 1st April, 1959, and ending with the 31st March, 1962, the rate of tax payable under

item 42 in the First Schedule to the said Act, at the point of first sale in the State, in respect of pottery articles, that is to say, articles made of

baked clay and stone-ware; and

(2) exempts for the period commencing on the 1st April, 1959, and ending with the 31st March, 1962, the dealers in pottery articles, that is to say,

in articles made of baked clay and stoneware, having total turnover of less than rupees ten thousand from the tax payable under the said Act.

14. Here again we are drawing attention to the use of the words ""that is to say"" occurring in the notification, as against the words ""such as

occurring in the notification referred to already.

Another notification, G.O.P. No. 1946, Revenue, dated 28th June, 1965, states :

In exercise of the powers conferred by sub-section (1) of section 17 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), the

Governor of Madras hereby exempts with effect from 1st April, 1960, from the liability to tax under the said Act, sales of documentary films, visual

materials like photograph slides, transparencies and visual communication novelties, by any dealer to the Government of Madras or to any

educational institution run by any local authority or to any of the Corporations specified below ....

14. Here we find the use of the expression ""like"".

Yet another notification, G.O.P. No. 1040, Revenue, dated 29th March, 1966, states :

In exercise of the powers conferred by section 17 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), the Governor of Madras

hereby exempts with effect on and from the 1st April, 1966, all sales of paddy (rice in husk), rice (husked paddy), cholam, cumbu, ragi, thinai, varagu, samai and kudiraivali, rice products (for example, rice flour and rice bran) and milk, from the tax payable under the said Act.

Here the notification uses the expression ""for example"".

15. Another notification, G.O.P. No. 1042, Revenue, dated 29th March, 1966, stated as follows :

In exercise of the powers conferred by section 17 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959), the Governor of Madras

hereby makes with effect on and from the 1st April, 1966, the following exemption, namely :-

(i) full exemption in respect of the tax payable by any dealer under the said Act on all the sales of handmade paper and handmade matches (other

than handmade coloured matches and star matches).

Here the expression used is ""namely"".

16. Thus it will be seen that it is not only the legislature that has used these different expressions in different contexts, but also the Government,

while issuing the notifications u/s 17 of the Act, has used these different expressions in different contexts. When these different expressions have

been used in different contexts, it is not possible to hold that the Government meant one and the same thing when it used these different expressions

in different contexts.

17. As far as the word ""namely"", is concerned, there can be no difficulty in understanding what exactly the word means. In the Concise Oxford

Dictionary the meaning of the word ""namely"" has been given as ""that is to say"". In the Shorter Oxford English Dictionary the meaning of the word

namely"" has been given as ""particularly""; ""to wit""; ""that is to say""; ""videlicet"". In the Chamber''s Twentieth Century Dictionary the meaning of the

word ""namely"" has been given as ""by name""; ""that is to say"". Consequently there can be no doubt about the meaning of the word ""namely"", that is,

it is restrictive in the sense that the general expression which precedes the word ""namely"" is confined to the itemised expressions that follow the

word ""namely"". Consequently the meaning of the word ""namely"" can only be restrictive and can he neither illustrative nor expansive.

18. However, Mr. Natarajan, the learned counsel for the respondent, drew our attention to a decision of the Allahabad High Court as well as the

structure of the notification itself. The decision of the Allahabad High Court relied on is Commissioner of Sales Tax v. Bishram Tiwari

[1971]28S.T.C.485. In that, case the item with which the court was concerned was :

Agricultural implements worked by human or animal power, namely, Khurpi (Hoe), Dibber, Spade, Hansia (Sickle), Garden knife, Axe,

Gandasa, Chaff-cutter, Shears, Secateurs, rake, shovel, ploughs and accessories thereof, water lifting leather buckets (pur and mhot) and

accessories thereof and Rahat and Persian wheel and accessories thereof.

19. The Allahabad High Court had to consider the scope of the expression ""namely"" occurring in the notification. The learned Judges observed :

The notification seeks to exempt agricultural implements worked by human and animal power and contains a list of certain agricultural implements

which are so worked by human and animal power. The list is preceded by the word ''namely''. According to the New English Dictionary, the word

''namely'' has the following meanings :

(i) particulary, especially, above all, (ii) carefully, precisely, (iii) by name, individually, (iv) at least, at any rate, (v) to wit, that is to say, videlicet.

It is thus clear that the word ''namely'' has got no fixed meaning. Depending upon the context, it may mean the things which have been named or it

may mean ''for example'' or ''such as'' or ''at least''.

20. With great respect, we are unable to agree with the learned Judges in their conclusion that the word ""namely"" has got no fixed meaning.

Whatever that may be, as far as the present case is concerned, we have sufficiently indicated that these different words, ""namely"", ""for example"",

such as"", have been used both by the legislature and by the Government in different contexts and therefore we cannot proceed on the basis that

the legislature and the Government used the different expressions loosely to mean one and the same thing. Therefore we are unable to hold that the

decision of the Allahabad High Court referred to above is of any assistance to understand the scope of the word ""namely"" occurring in the present

notification with which we are concerned.

21. The second point urged by the learned counsel is that the very notification proceeds to state :

.... but excluding -

(i) brokens of pulses and grams;

(ii) oil-cakes; and

(iii) cotton seeds.

21. According to the learned counsel, the provision for exclusion will mean that but for the express provision for exclusion these three items also

would he comprehended by the expression ""cattle feed"" and that is the reason why the Government notification has taken care to exclude these

items; and, if this is taken into account, certainly the word ""namely"" will not have a restrictive meaning, but would merely mean ""for example"" or

such as"". In the first place we have already indicated as to why the word ""namely"" occurring in the notification should be given a restrictive

meaning. Secondly, the provision for exclusion might have been made ex abundanti cautela, and from that alone no inference can be drawn that the

word ""namely"" had not been used in its normal and natural sense, but had been used in a different sense. In substance, the argument of Mr.

Natarajan is that the word ""namely"" is only illustrative and not restrictive and, therefore, every item of cattle feed will fall within the scope of the

notification. If the intention of the Government was to exempt every article that will reasonably answer the description ""cattle feed"", then the

Government would have simply used the expression ""cattle feed"" without adding ""namely"" and what follows it. In view of this we are unable to

accept either of the contentions put forward by Mr. Natarajan on behalf of the respondent.

22. Under these circumstances, the tax revision case is allowed and the order of the Tribunal is set aside. There will be no order as to costs.

23. Petition allowed.